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ABSTRACT

This subcommittee report presents a history of congressional action regarding violence on television and then outlines conclusions and recommendations for legislative consideration. Acknowledging that excessive viewing of violence may have harmful effects on children, the report places responsibility for program content on the networks and advocates industry self-regulation as an effective means of limiting televised violence. There are avenues consistent with the First Amendment through which the government and the public can address the problem. However, this study concludes that parents are the most powerful agents in curbing this problem. Three ways are suggested: parents should (1) monitor more closely the viewing habits of their children, (2) participate in a positive and active way in their children's television viewing, and (3) write to local broadcasters and networks to register complaints about offensive programs. Several dissenting and separate views on the issue accompany the report. (MAI)

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VIOLENCE ON TELEVISION

REPORT

together with

ADDITIONAL, DISSENTING, AND SEPARATE VIEWS

BY THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

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NOTE

The material cited from the hearing record is footnoted as follows:

Witness, place of testimony, page number in hearing transcript.

Thus:

"Tinker and Burns, LA, 90" refers to their testimony at the Los Angeles hearings at p. 90 of the printed hearings on Sex and Violence on Television, July and August, 1976.

"Wirth, opening statement, Denver, 2–3," refers to that same volume at pp. 2–3, but notes that the statement was made in Denver.

"CBS, Washington, 186–7," refers to CBS testimony at the Washington hearings on March 28, 1977, at pp. 186–7 of the stenographic transcript of the hearings.

VIOLENCE ON TELEVISION

I. PREFACE

Concern regarding the portrayal of violence in drama, literature, and the mass media is not new in American society. For over 100 years, individuals, citizens groups, and Congress have questioned the role of literature and the mass media in creating a climate which may lead to violent behavior in society.[1]

In recent years, because of the widespread and increasing popularity of television, issues regarding the portrayal of violence on television and its possible effects on society have been of increasing concern to the Congress and to the American people.

This concern has grown as more researchers have maintained that excessive viewing of televised violence may lead to aggressive behavior[2] or feelings of alienation and fear.[3] Because television is a powerful and pervasive influence in American society, the presence of large amounts of televised violence and the problem of how to deal with it raises questions about the impact of such an influential medium on our society, the role of marketplace in shaping the content and quality of television programing, and the Government's role in resolving these issues.

The interest of the House Subcommittee on Communications in the subject of televised violence was renewed recently as a result of the evolution and implementation of the "Family Viewing Hour" which was designed to cope in some measure with the portrayal of violent action on television. By holding a series of hearings on the subject of televised violence, the subcommittee sought to provide a forum in which a dialogue among all those involved could take place. It was further hoped that by bringing all interested parties together, new approaches and new solutions might be devised. To this end, the subcommittee held 4 days of hearings: July 9, 1976, in Denver, Colo.; August 17 and 18, 1976, in Los Angeles, Calif.; and March 2, 1977, in Washington, D.C. Testimony was received from a total of 81 persons and organizations.

Following are a history of congressional action in the area of televised violence and the subcommittee's conclusions and recommendations.

II. HISTORY OF CONGRESSIONAL ACTION[4]

Congressional interest in the subject of televised violence dates back to 1954 when Senator Robert Hendrickson, then chairman of the

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[1] See David Brion Davis, "Violence in American Literature," *Violence and the Mass Media*, Larcen, Ed., (Harper and Row, 1968), p. 70.

[2] *See* generally, 1972 Surgeon General's Report, "Television and Growing Up: The Impact of Television Violence"; Testimony of Greenberg and Atkin, Washington, 353, 357.

[3] Gerbner, Washington, 18, 22, 41. No unanimous body of opinion exists, however, which demonstrates this relationship on a conclusive basis. Gerbner, Washington, 44–45; Mendelsohn, Denver, 11, 17.

[4] This section is derived largely from the opening statement of Congressman Wirth, Denver, pp. 2–3.

Senate Subcommittee To Investigate Juvenile Delinquency held the first hearings which linked the subjects of juvenile delinquency and television programing. When Senator Estes Kefauver became chairman of that subcommittee in 1955, he continued these hearings.

In 1961 and 1962, Senator Thomas Dodd initiated the first comprehensive congressional inquiry into the effects of televised violence. At that time, the Senator had the full support of both President Kennedy and Robert Kennedy, who was then Attorney General. Although there was a great deal of discussion about reducing the level of violence presented on television, the death of President Kennedy and the resignation of the Attorney General truncated that investigation and brought an end to the discussion.

The late Congressman Torbert Macdonald, who chaired the Communications Subcommittee [5] from January, 1967 to April, 1976, was also concerned about the potentially harmful effects of televised violence on children and adolescents. He was responsible for the children's television task force which was established at the Federal Communications Commission (FCC) to study the problem of televised violence and to determine what regulatory action, if any, the Commission might undertake.

Senator John Pastore, chairman of the Senate Subcommittee on Communications until 1976, shared Congressman Macdonald's concerns, and was instrumental in the creation of the Surgeon-General's advisory committee in 1969 that studied the effects of televised violence on children. When the Surgeon General's report was issued in March, 1972, it stated that the advisory committee had found a "preliminary and tentative indication of a causal relation between viewing violence on television and aggressive behavior; an indication that any such causal relation operates only on small children—who are predisposed to being aggressive—and an indication that it operates only in some environmental contexts." [6]

In testimony before the Senate Communications Subcommittee, Surgeon General Jesse Steinfeld, called for appropriate remedial action. He stated that the "time has come—no action in this social area is a form of action: it is acquiescence in the continuation of the present level of violence entering American homes." [7]

By 1974, the concern about televised violence had intensified. The annual violence profile prepared by Dr. George Gerbner indicated that the incidence of TV violence had reached a new high, and the Federal Communications Commission noted a dramatic increase in the complaints on violence and obscenity from viewers in that year.[8]

Both the House and Senate Appropriations Committees became involved in the issue in 1974 and directed the Federal Communications Commission to submit a report to Congress by year's end outlining

[5] In the congressional reorganization of 1975, the House Subcommittee on Communications and Power was divided into two separate entities. Congressman Macdonald, who had chaired the Subcommittee on Communications and Power, retained the chairmanship of the Communications Subcommittee.

[6] See Report to the Surgeon General, *Television and Growing Up: The Impact of Televised Violence*, "Summary of Findings and Conclusions," pp. 18–19.

[7] Quoted by Representative Wirth, Denver, 3.

[8] Representative Wirth, Denver, 2–3.

specific actions taken and planned with regard to the problem of violence on television. As a result of this instruction, FCC Chairman Richard Wiley initiated a series of meetings with the presidents and other senior officials of the networks and the National Association of Broadcasters (NAB).

The meetings between the FCC, the networks, and the NAB continued throughout the fall of 1974, and in 1975 the so-called "Family Viewing Hour" was born. This attempt at industry self-regulation, adopted and implemented by the NAB in the fall of 1975, stipulated that the first hour of network prime-time programing and the hour immediately preceding it be suitable for viewing by the entire family.

The continuing controversy and litigation [9] surrounding the "Family Viewing Hour" was a major factor in the subcommittee's decision to hold hearings on televised violence during the last year. The propriety of the Federal Communications Commission's role in the evolution and implementation of the family viewing concept was a matter of concern to some members of the subcommittee. In addition, the subcommittee wished to be responsive to those who believed that they had been excluded from the decisionmaking process through which the policy was developed.

In order to ensure that all interested parties could be heard, the subcommittee's hearings were held around the Nation, and testimony was invited from program producers, network officials, local broadcasters, and a variety of civic, professional, and public interest groups.

Throughout its investigation, the subcommittee has been acutely aware of the restraints on legislative and regulatory activity imposed by the First Amendment and Section 326 of the Communications Act. Nevertheless, in discussing the issue of violence on television, a number of individuals and organizations have called for governmental action to solve the problem.

The First Amendment and Section 326 of the act protect viewers from Government censorship of broadcast program content. Henry Geller, former FCC General Counsel, testified before the subcommittee that "the Government therefore has to stay out of content regulation and that its proper role is to create a better climate for broadcasters and the public to deal with this issue." [10] Accordingly, any solution to the violence issue proposed by this subcommittee must, in Mr. Geller's words, remain "content neutral." [11]

As a result of such considerations, the subcommittee has made expressly clear that it has no intention of considering any legislation that would violate the first amendment.[12] Nevertheless, the subcommittee, in connection with its more general review of the Nation's telecommunications policies, does have a duty to explore the options available that might be responsive to the problem of excessive viewing of televised violence, consistent with constitutional constraints. This investigation is a first step in that direction.

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[9] *Writers' Guild of America, West* v. *FCC*, 423 F. Supp. 1064 (C.D. Cal. 1976). The case is now on appeal in the U.S. Court of Appeals for the Ninth Circuit.

[10] Geller, Washington, 59.

[11] Geller, Washington, 61.

[12] Chairman Van Deerlin, opening statement, Denver, 1, Los Angeles, 71, Washington, 2; Representative Wirth, Denver, 4; Representative Waxman, Los Angeles, 73; Representative Murphy, Washington, 3; Representative Gore, Washington, 8; Representative Russo, Washington, 294.

III. CONCLUSIONS AND RECOMMENDATIONS

Conclusion 1

The level of violence on television continues to be a cause for serious concern. Although it may be impossible at this time to "prove" a precise cause and effect relationship between televised violence and aggressive behavior, excessive viewing of violence may have harmful effects.

The effort to assess the amount, nature, and impact of television violence is a source of significant controversy among those interested in the field. Although CBS presented figures showing that it had reduced the amount of violence on its 1976–77 schedule,[13] Dean George Gerbner of the Annenberg School of Communications testified that his index indicated that the amount of violence on television had sharply increased during the same time period.[14]

Some of the difficulty in assessing the impact of televised violence stems from disagreement regarding an appropriate definition of "violence." Among those who appeared before the subcommittee, the standards employed for measurement varied sharply.

Dr. Gerbner's definition that violence is "the overt expression of physical force against self or other, or compelling action against one's will on pain of being hurt or killed, or actually hurting or killing" includes incidents which are accidental or humorous. In addition, the "expression" may be that merely of the writer or director, rather than a character in the drama, as in the case of an accidental collision or the striking of lightning, because in Dr. Gerbner's view there are "no unintended 'accidents' in fiction and drama." [15]

Under Dr. Gerbner's definition, a murder would count the same as an intentional push or shove.[16]

The subcommittee also received testimony from Professors Bradley Greenberg and Charles Atkin of Michigan State University. They defined violence as that which is physically or psychologically injurious to another person or persons whether intended or not, and whether successful or not.[17]

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[13] CBS, "Network Prime Time Violence Tabulations for the 1976–77 Season," submitted to the Senate Commerce Committee, May 9, 1977 (hereinafter cited as CBS Violence Tabulations), p. 1. CBS reduced violence in 1975–76 by some 36 percent over the previous season. CBS, Washington, 185. ABC stated it has steadily decreased its number of violent programs, and the numbers of violent incidents in them, at Washington, 208. But this does not correspond to the data compiled by CBS Violence Tabulations, at 8.

[14] In the 1976–77 season, Gerbner found the highest violence index since his measurements began in 1967. His index also indicated that (1) the percentage of characters involved in killing and violence rose to the second highest on his records; (2) the percentage of programs with any violence rose to the highest level on his records; and (3) violence increased sharply during the family viewing hour and during childrens' programs on Saturday mornings. Gerbner also found that 100 percent of all cartoons in 1976 contained some "violence," and that the number of cartoons with some violence was up from the 80–90 percent levels recorded in previous years. Moreover, Gerbner found that 60 percent of all television characters are victimized by or involved in violence, as he measures it, and that the brunt of such victimization is borne by children, women and minorities. Gerbner, Washington, 17, 33–35.

[15] George Gerbner, Violence Profile No. 8, p. 12.

[16] See, for example, colloquy between Dr. Gerbner and Representatives Gore and Russo, Washington, 31, 38–40.

[17] Using this standard, Greenberg and Atkin reported that the programs they monitored contained an average of 42 antisocial acts per hour, or about one per program-minute, that there were fifteen acts of physical aggression per hour; that although there was less physical aggression in family viewing time, there was more verbal aggression; and that Saturday morning programing contained the highest levels of violence, with the amount of physical aggression during this programing twice as high as during prime time. They concluded that the typical television-viewing child, watching throughout the week, is exposed to 300 acts of physical aggression per week. Greenberg and Atkin, Washington, 348–49, 351.

CBS, in its testimony, defined violence as "the use of physical force against persons or animals, or the articulated explicit threat of physical force to compel particular behavior on the part of a person." [18]

In the absence of an agreed-upon definition of violence, the testimony before the subcommittee often dealt heavily with methodology, rather than substance. For their part, the networks contested the validity of the Gerbner study. NBC testified that the Gerbner index appeared to "lump together comedy, acts of nature and accidents with acts of physical harm." The index was therefore characterized as nondiscriminating.[19] CBS questioned the types of characters measured and the amount of programing monitored.[20] and concluded that the nature of Gerbner's index is so marred by "fatal" analytical flaws that,

> the index itself is not a measure of the amount of violence on network television . . . (and therefore) cannot be used as a measure of the trend of television violence over the years.[21]

Dr. Gerbner replied in some detail that independent, nonnetwork analyses of his index have substantiated its validity, that he feels the monitoring sample is valid, and that his definition of violence is not too dissimilar from that of the networks.[22]

In an effort to resolve these disagreements over the measurement and interpretation of televised violence, Dr. Gerbner suggested that under congressional authority both he and CBS, the network which has done the most monitoring of televised violence, and others, pool their data in an archive under the auspices of the Library of Congress.[23] In the course of the subcommittee hearings, all three networks agreed in principle to this proposal.[24]

Despite these disputes regarding the level of violence on television, an examination of the data from CBS and independent researchers indicates that (at least during prime time) the level of violence on television was as high or higher in 1976–77 than it was in 1972.[25] This continuing high level of violence on television suggests that the industry has not adequately come to grips with the problem.

Concurrent with the increase in the level of violence on television, concern about the effects of excessive viewing of televised violence also has grown.

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[18] Van Gordon Sauter, Washington, 218.
[19] Robert T. Howard, Washington, 191.
[20] John Schneider, Washington, 219, 264.
[21] CBS, Letter to Chairman Van Deerlin and analyses of Gerbner Index by CBS Economics and Research, April 25, 1977.
[22] Gerbner, Washington, at 24–25, 27, 31–2, 39–40. Gerbner documented these contentions and responded to CBS' criticisms of April 25, 1977, in a letter to Chairman Van Deerlin, May 17, 1977. CBS replied to this letter in July, 1977.
[23] Gerbner, Washington, 25–6, and addendum to Gerbner testimony, Mar. 2, 1977.
[24] Howard and Pierce, Washington, 226–7; Schneider, Washington, 264.
[25] CBS Violence Tabulation, House testimony, Mar. 2, 1977, Charts 1, 4, and 6. CBS data show: (a) ABC went from an average of 40.5 incidents of dramatic violence per week in the 1972–73 season to 49.3 incidents per week in 1976–77; NBC increased from 49.5 to 55.9 per week, while CBS dropped from 48 to 31 incidents of violence per week; (b) In 1976–77, violence on NBC increased 47 percent over the prior season, violence on ABC stayed the same, while CBS dropped 5 percent. That same season, the rate of violent incidents per hour increased 3 percent and 4 percent on CBS and ABC respectively, and increased 50 percent on NBC; (c) During the Family Viewing Hour period, violent incidents per week averaged 3 on CBS, 14 on NBC and 11 on ABC for a total of 28 per week during the season, an increase of 14 over the prior season; (d) The average number of violent incidents per week on "action" programing dropped from the 1975–76 season to the 1976–77 season from 85.7 to 76.3. Although the average rate per hour rose from 3.8 to 4.1, most of this is accounted for by the increase in violence on NBC. Greenberg and Atkins, however, testified that under their definition, "ABC television was the most frequent provider of physical aggressive acts. . . . There were fewer such acts per hour on CBS, and the least on NBC." Greenberg, Washington, 350.

In 1972, the Surgeon General of the United States presented the report "Television and Growing Up: The Impact of Televised Violence" to the Congress. This report stated that a preliminary and tentative indication of a causal relation between viewing violence on television and aggressive behavior had been found. Subsequent studies by Dr. Albert Bandura of Stanford University concluded that (a) viewing aggression on television tends to reduce a child's inhibitions against acting in a violent, aggressive manner; and (b) children may copy what they see on the television screen.[26] Other studies have shown that viewing violence may blunt a child's sensitivity to violent action.[27]

As Dr. Thomas Elmendorf, past president of the California Medical Association, testified during the subcommittee's hearings:

> The accumulation of evidence suggests . . . that children will copy TV violence; that they often do not do so because of parental control and lack of access to weapons; that TV teaches a child that violence often succeeds and that problems can be solved by violence; that viewing TV violence blunts sensitivity to violence in the real world; that children remember specific acts of violence, and that preferring violent television at an early age leads to more aggressive teenage behavior.[28]

Greenberg and Atkin told the subcommittee:

> The television networks broadcast an extensive amount of violent content—about 15 acts of physical aggression each hour. Our survey investigation supports previous research demonstrating that TV violence produces aggressive behavior. The content is as violent and the effects are as strong in 1976 as 5 years ago when the Surgeon General reported on the problem.[29]

Children are not the only ones who may be influenced by televised violence. Among adults, heavy viewers of television have been found to be more fearful, mistrustful, and suspicious of the risks of life than light viewers.[30] Television violence may indeed be double-edged, in that some who view it become more violent while others become more accepting of violence.[31]

Those who are most often portrayed as victims on television—especially women and minorities—may be especially influenced by some depictions.[32]

Concern over the effects of televised violence also has been expressed by other segments of society. For example, last year the American Medical Association's House of Delegates adopted a resolution stating that televised violence "is a risk factor threatening the health and welfare of young Americans, indeed our future society."[33] Recent resolutions and activities of the National Congress of Parents and Teachers (National PTA) are further evidence of this increasing public awareness and concern.

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[26] Elmendorf, LA, 102–103.
[27] Elmendorf, LA, 103.
[28] Elmendorf, LA, 104.
[29] Greenberg and Atkin, Washington, 335–6.
[30] Gerbner, Washington, 18, 22, 41. Dr. Gerbner has not taken a position on whether such individuals are already disposed to that psychological condition and therefore stay at home (and hence watch more television).
[31] Elmendorf, LA, 104.
[32] Gerbner, Washington, 22. Gerbner also stated: "We are teaching [on television] our women to be more afraid, and we are not surprised when we observe that they are more afraid. We are teaching them more than others to anticipate victimization and to, in effect, take the role of the victim, thereby accepting an inferior power role in society."
Gerbner, responding to a question by Representative Mikulski, Washington, 53.
[33] Wirth, opening statement, Denver, 2; and *The Washington Post*, July 1, 1976, p. C10.

On the other hand, there is a substantial body of social science opinion that regards the question of causation as still unresolved.[34] For example, Dr. Harold Mendelsohn of the Mass Communications Department of the University of Denver testified before this subcommittee that public concern regarding a causal link between actual violence and exposure to television violence "simply is not borne out in general terms by any acceptable empirical evidence whatever."[35]

In addition, links between simulated laboratory aggression and violent behavior in society of a criminal nature have not been proven. Moreover, the laboratory settings of these studies are markedly different from those in real life.

Thus, although a precise cause and effect relationship has yet to be "proven," there is agreement that because television plays a major role in shaping the values and attitudes of its audience, televised violence poses a problem that cannot be ignored. The networks agree that a reduction in the level of violence on television is desirable.[36] The subcommittee concurs with the conclusions of others that there is sufficient evidence showing that an excessive amount of televised violence is a source of sufficient societal concern to warrant congressional attention and scrutiny.

Conclusion 2

Responsibility for the present level of violence on television rests largely with the television networks, which exercise substantial control over the programing that they purchase and make available to their affiliates and, to a lesser degree, with broadcast licensees, program producers, advertisers, and the viewing public.

In the opinion of the subcommittee, the national networks bear primary responsibility for the quantity of violence on television. They exercise substantial control over the programing they choose to purchase, and are involved in decisions regarding development by outside producers of entertainment programing which the networks provide to their affiliates. Indeed, the networks do not dispute this fact, but contend that they have established a viable system of standards and controls to prevent what they characterize as "gratuitous violence."[37]

NBC testified that its Broadcast Standards Department is involved with every entertainment program from the initial stages of script

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[34] See, for example, Milgram, S. and Shotland, R., *Television and Antisocial Behavior: Field Experiments*, New York: Academic Press, 1973.

Also, Comstock G. *Television Violence: Where the Surgeon General's Study Leads*. Santa Monica, Calif., The Rand Corp., May, 1972.

Also, Howitt, D. and Cumberbatch, G., *Mass Media Violence and Society*. New York, John Wiley & Sons, Inc., 1975.

Also, Hartnagel, T., Teevan, J., and McIntyre, J., "Television Violence and Violent Behavior," *Social Forces*, 54(2), 341–351.

[35] Mendelsohn, Denver, 11. Dr. Mendelsohn further testified that studies supporting the conclusions of the Surgeon General's Scientific Advisory Committee on Television and Social Behavior, of which he was a member, indicate that there is "the weakest possible statistical correlation you can get between exposure to television violence and some kinds of aggressive behavior among some kinds of children under some kinds of circumstances." *Id.* at 17.

[36] ABC stated that it is seeking to reduce violence, not because of scientific studies, but because of public concern. Pierce, Washington, 224, 225, 245, 255. CBS is doing so because of a "presumption of causality" between violence on television and anti-social behavior. Schneider, Washington, 226, 256. But CBS stresses that causality is not, in its judgment, scientifically proven. Schneider, Washington, 252–3.

NBC testified that it believed "the proliferation of program types whose plotlines heavily involve violence has become excessive. It is taking positive and practical steps to reduce the number of these programs on the NBC Television Network." Howard, Washington, 189.

[37] Traviesas, Washington, 197.

evaluation to final approval of the finished product. "We review every entertainment program at its inception to make certain they [sic] comply with the standards set up by NBC, and our own code standards. . . ." [38]

No testimony was received by the subcommittee that would indicate that the other networks operate in a different manner, and indeed they confirmed the similarity of their approach.[39]

Members of the Hollywood program production community urged that responsibility for program content, including the level of violence in each program, rests with the networks. Television writer Richard Powell stated:

> If there is too much violence on television, the responsibility rests with ABC, CBS, and NBC. Control starts at the beginning with the creation of the formats of the new series . . . The networks are in on the creation from the first day . . . They have absolute control, not only from the start, but all the way down the line. . . .[40]

Further, writer and producer Larry Gelbert testified that: ". . . if television has too much sex or too much violence, the reason that is so is that the networks want it so." [41]

The networks objected to this assertion by members of the production community. While testifying to their control over program purchase decisions, they categorically denied that they encourage the gratuitous insertion of violence in program material. On the contrary, the networks testified that they regularly meet with members of the creative community to discuss applicable standards and policies.[42] Beyond that, all networks maintain broadcast standards personnel in Hollywood whose responsibilities include reading and evaluating proposed scripts, viewing of rough-cut films and consulting with producers at various stages of the program production process.[43] All networks submitted, in support of this testimony, exhibits to either the subcommittee or individual members consisting of internal memoranda describing program changes needed to meet applicable standards, as well as sample memorandums to Hollywood producers detailing specific objections in scripts or rough-cut film—objections which had to be corrected before the program could be considered acceptable.[44]

While there appears to be a need for increased communication and cooperation between the networks and the Hollywood production community, the ultimate loss has been to the viewing public. The matter should be remedied and steps taken to improve these lines of communication as soon as possible.

Over the years, the economics of commercial broadcasting have led local stations to rely heavily on the national networks for programing. Although the roughly 600 network affiliates do originate some local programing, the networks provide them with nearly 70 percent of their total program schedule. Since an additional 10 to 15 percent of an average affiliate's programing consists of nationally syndicated pro-

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[38] Travisas, Washington, 197.
[39] Pierce, Washington, 283.
[40] Powell, Washington, 311, 318.
[41] Gelbert, L. A., 140.
[42] Travisas, Washington, 199.
[43] Travisas, Washington, 197.
[44] ABC supplied the subcommittee with memoranda asking producers to make changes to conform the programs to network standards. CBS provided similar material, upon request, to Representative Waxman, and NBC did likewise upon request of Representative Rusas. Copies of all documents are on file with the subcommittee.

grams, many of which have been carried by the networks, this leaves only 15 to 20 percent which is locally produced (the majority of which is local news).

The reason for this heavy reliance on network programing lies in the economics of commercial broadcasting. The average half-hour prime time network program costs over $170,000 to produce. Because network programs reach a large national audience, this cost is spread over hundreds of thousands of viewers, and, in fact, may amount to as little as 1 cent per viewing home. Locally produced programs, on the other hand, may cost less to produce, but they also reach much smaller audiences. Thus, the cost per viewing home is often higher for a modestly produced local program than it is for the more costly attractive network programs. Because television station revenues depend on attracting the most viewers for the least cost, it is to the affiliate's advantage to carry as much of the network's programing as possible. Consequently, most programing carried by local affiliates—both entertainment and information—is provided by the three networks.

Prescreening is one way in which the networks provide affiliates with advanced information concerning network programing scheduled for future broadcast. The three networks currently make available most of their prime time programs to their affiliates, and the affiliates in varying degrees take advantage of this opportunity to evaluate possible areas of controversy which the programs may contain. This practice permits affiliates to reject particular programs before they are telecast. Additionally, networks alert their affiliates when they plan to offer a program which the network believes warrants a cautionary legend at the beginning of the program.

The subcommittee believes that the prescreening process can be made to work more effectively.[45] The major difficulty appears to be the shortness of time before scheduled network air date that an affiliate is able to prescreen a show. The networks testified that their contracts provide for adequate lead time between the program completion date and the air date, but that the creative process is inherently an uncertain one, and that from time-to-time schedules are not met.[46] The network then must either demand that the contractual time schedule be met, or give the producer added time to improve the program or correct problems which were not apparent earlier. Frequently, the network agrees to an extension of time. Of necessity, this reduces the time available to affiliates to prescreen such programs, often to a matter of a few days. This is an unsatisfactory situation, since the licensee is all but precluded from duly exercising his statutory discretion. To a certain extent, the affiliates are caught between the networks and their own responsibilities as public trustees. The obvious tensions inherent in this relationship cause affiliate dissatisfaction with the prescreening process. However, these circumstances do not in any way obviate the affiliates' obligation to fully exercise their independent broadcast judgment.[47]

[45] See particularly series of questions by Representative Wirth, Washington, 228–235, and Representative Markey, Washington, 249–252.
[46] Schneider, Washington, 230.
[47] *See Writers' Guild of America, West* v. *FCC*, op. cit., at III. A.4., "Agreement to Compromise Independent Programing of Licensees."

In September 1976, Westinghouse Broadcasting Co. filed a petition with the FCC, seeking, among other things, a greater opportunity for local stations to prescreen upcoming network programs.[48] The petition proposes that affiliates receive network programing at least 4 weeks in advance of its scheduled air date. While it may be difficult to adopt a universal rule in this matter,[49] the current system seems inadequate to ensure the broadcaster a reasonable opportunity to effectively exercise his licensee responsibility. The subcommittee believes that the situation can and should be improved.

Responsibility for the amount of violence on television does not rest solely with the networks, their affiliates, and other broadcast licensees. The growing trend toward independent production and airing of programs is an indication that producers are not totally controlled by network management. The production community must share the blame for the quality and quantity of violent programs, as must advertisers without whom such programing would not be aired.

Finally, the responsibility must also rest with members of the viewing public, the consumers of television programing. According to the economic laws of supply and demand, if there were less demand for violent programs, the supply would correspondingly diminish.

Conclusion 3

Parental supervision is probably the most effective way to curb the negative effects of excessive viewing of televised violence by children.

Testimony received by the subcommittee indicated that although the issue of violence on television has been well publicized, only a small percentage of parents (5 to 15 percent) actually prohibit their children from viewing programs known to contain violent material.[50] Studies have shown that parents viewing with their children can play a significant role in reducing the negative effects of televised violence. One witness stated:

> Parents can attempt to mediate the impact of violent programs by interpreting the content for children. We find that a majority point out that the TV action does not reflect real life, explain that the TV aggression is not the best response to problems, warn children not to copy such acts, and express disapproval of violent behavior displayed during the shows.[51]

In order to test whether strategies of parental supervision are effective, researchers in several studies compared the strength of television's impact on children who viewed with their parents, with its effect on children who did not receive parental supervision. They found that the relationship between a child's exposure to televised violence and his aggressive behavior was half as strong for children who frequently viewed police-detective programs with their parents as for children who seldom viewed with a parent.[52]

Parental supervision of what children view and parental participation in watching programs with children are helpful and needed prac-

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[48] FCC Docket No. 21049 (RM–2749).
[49] See colloquy between Representative Markey and Schneider, CBS, Washington, 249–252.
[50] Hanneman, L. A., 306; Atkin, Washington, 354.
[51] Atkin, Washington, 354.
[52] Atkin, Washington, 355.

tices. Few parents engage in either activity. Too often the response has been to shift the burden to some other institution outside the home. Both Representative Gore and Representative Russo commented on this aspect of the problem and the need to further involve parents in their children's viewing habits.[53] Other institutions can support parents in meeting their primary responsibility and additional tools can be placed in the hands of parents to assist them in their efforts. The subcommittee notes that *TV Guide* for the past year has noted each network program which is scheduled to carry with it an advisory or warning. Parents can, by referring to *TV Guide*, have a good idea of what programs may be inappropriate for their children.

Last year, the American Medical Association announced that it was preparing a pamphlet to be made available through doctors' offices which would assist parents in developing good viewing habits in their children. The subcommittee looks forward to the publication of this pamphlet and believes it could be of assistance to parents.

In the final analysis, parents must assume their responsibility in this matter. The atmosphere of the home is the best place to teach children. Example and personal participation remain two very effective tools for teaching children, and only parents can use them effectively in this case.

Conclusion

Industry self-regulation is a potentially effective way to limit the level of televised violence, and, indeed, to adjust broadcast content of any kind to the tastes and concerns of the general public, or segments of that public. The subcommittee, however, is concerned with the results to date of the industry's efforts to regulate itself.

The subcommittee received a great deal of testimony regarding the efficacy of efforts to control violent program content undertaken by the industry. Repeatedly, the networks, the National Association of Broadcasters, and the Federal Communications Commission stated their belief that vigorous self-regulation can deal effectively with the problem of televised violence and that structural reform is not necessary. Representatives of the networks, for example, pointed out that there is a recognizable difference between violent content that contributes to the meaningful development of a plot,[54] and "gratuitous" violence, and that their current programing policies are oriented toward the elimination of excessive and "gratuitous" violence.[55]

The effectiveness of industry self-regulation was a matter of some disagreement at the subcommittee's hearings. Numerous witnesses from the program production industry testified that the networks routinely

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[53] Representative Gore, Washington, 125; Representative Russo, Washington, 81.

[54] Schneider, Washington, 185–8; Howard, Washington, 191; Pierce, Washington, 208; Wasilewski, Washington, 146.

[55] Schneider, Washington, 187; Howard, Washington, 191. The network position was explained more fully by Van Gordon Sauter of CBS: "[W]e are discussing here the action-adventure type of program series, and I think it is fair to say that the action-adventure series is a very legitimate part of the television entertainment spectrum. That form has been with us for years in drama and literature and it is highly appropriate to television. Mr. Rintels has indeed said there is too much violence on television—and even by saying that, we begin to put a quantity on it, and we ask the question then, how much is just right? . . ."

Sauter, Washington, 216. Sauter indicated that the surest approach in such an ambiguous area was to operate by some basic ground rules.

"And those ground rules are that we should not have excessive or gratuitous violence." *id.* at 217.

ask for more "action" in the scripts and formats they solicit.[56] Several witnesses testified that the demand for "action" by the networks is so pervasive that it is unspoken [57]—rarely put in written form.[58] The networks denied these allegations and offered documentary evidence to substantiate their position that they frequently demand that producers reduce the incidence of violence in their programs and alter the manner in which it is portrayed.

During the hearings the networks testified that it was their intention to take steps to reduce violence in programing for the upcoming 1977–78 season.[59] Of course, such statements have been made before. It has seemed that the promises outreached the performance in some cases. Nevertheless, it seems that this may not be the case in the new television season just begun. A number of major publications, in reviewing the season, noted the marked reduction both in programs in which violence is likely to be a significant factor and in the incidence of violence within individual programs.[60]

These developments indicate that the picture of the networks as insensitive and unconcerned about the question of violence is overdrawn, and that self-regulation can work if those charged with implementing it are committed to doing so.

However, the subcommittee is well aware that self-regulation has by no means developed into anything approaching a perfect mechanism. In one instance, a particularly violent program was clearly a network creation. CBS contracted for, promoted, and aired a program during the 1976–77 season which the *Washington Post* characterized as "the worst TV program ever." [61] The program, "Evel Knievel's Death Defiers," was built around a circus-like atmosphere in which various daredevils dynamited themselves, plunged from high-dive platforms, and hung beneath aircraft in flight.

CBS subsequently acknowledged that the broadcast of the program was an error.[62]

It is true that this is only a single example and cannot be used to call the industry's efforts at self-regulation a failure. Nonetheless, it does point out that the system is not perfect and that broadcasters must be constantly alert in order to insure that such problems are eliminated to the extent possible. The subcommittee is not unaware of the very real First Amendment issues, and believes that an evolving system of self-regulation which continually takes into consideration the values and concerns of the American people is a far better system than any which would be devised by the Government. For such a system to truly be effective, however, broadcasters must be ever alert to the public they serve. A failure to do so will inevitably bring some form of governmental involvement in the process.

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[56] Gelbart and Rintels, LA. 142; Lear, LA. 261.
[57] Roddenberry, LA. 280; Powell, Washington, 318.
[58] "Well, I think you are looking for the smoking gun which does not exist, because the networks have been in this business a long, long time, and they do not write letters like that." Powell, Washington, 325.
[59] Schneider, CBS, Washington, 187; Howard, NBC, Washington, 189–190; and Pierce, ABC, Washington, 206–209.
[60] See *Time*, September 5, 1977, pp. 46–52; *Newsweek*, September 5, 1977, pp. 52–59; *U.S. News & World Report*, September 12, 1977, pp. 20–23.
[61] Quoted by Representative Murphy, Washington, 4.
[62] Letter to Representative Murphy from CBS, quoted by Representative Murphy, Washington, 4.

Conclusion 5

There are avenues through which the subcommittee, the Federal Communications Commission, and the public can address the problem of televised violence consistent with the First Amendment.

During its hearings, the subcommittee heard numerous suggestions from experts in communications law and from representatives of public interest groups regarding options available to the Government and the public which would help to alleviate the problem of excessive televised violence. Because direct regulation of program content is most likely in violation of the First Amendment, governmental action in this area is somewhat circumscribed. Nonetheless, there are legitimate avenues of regulatory and consumer action open to Congress and the public.

One witness suggested that the Federal Communications Commission could require that local affiliates be given an opportunity to prescreen all network programs 1 month in advance of their broadcast date. Such prescreening could enable local stations to be more responsive to local tastes and to fulfill more effectively their responsibilities as public trustees. Recently, this approach was suggested by the Westinghouse Broadcasting Co. in a petition to the Federal Communications Commission.[25]

The subcommittee at this point takes no position on the exact time period which should be given in advance of the broadcast date, leaving this decision to the FCC which will consider its practical and technological aspects.

Another suggestion, and one being pursued by this subcommittee, is to educate the public, the broadcast industry, and the Government about the problem and possible solutions. As Dr. Gerbner stated:

> [T]he more information these hearings can generate and coordinate, the more intelligent and more thoughtful all people on all sides of this issue will be.[26]

Members of the television viewing audience also can play a role in reducing televised violence.[27] The most direct approach would be to refrain from viewing programs that are known to contain violent material. The effectiveness of this approach could be heightened if, at the same time, viewers made the broadcasters and advertisers aware of the cause of their dissatisfaction.[28] Current studies and consumer education projects undertaken by the National Citizens Committee for Broadcasting and the National Congress of Parents and Teachers reflect a growing awareness of the power of the public to influence programing decisions. The results of such organized viewer action are already being seen in the reduction of "hard action" programs in the 1977–78 network schedules and in the refusal of several major advertisers to sponsor programs containing gratuitous or excessive violence.

The establishment of a children's television network, financed through private foundation grants and/or public subsidy, was pro-

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[25] FCC Docket 21049 (RM 2749), 1976.
[26] Gerbner, Washington, 29.
[27] Representative Russo, Washington, 84; Mendelsohn, Denver, 16.
[28] Rimendorf, LA, 124.

posed as another way to make more children's programming available to viewers.[67] Such a network could operate either within the framework of the public broadcasting service or by feeding its programs to commercial licensees. The subcommittee, at this point, takes no position on the public financing of such an endeavor.

A final general approach presented at the hearings was the facilitation of parental supervision of children's viewing habits. Several witnesses suggested that the FCC could require that new television receivers be equipped with locking devices so that parents could control their children's viewing. It was further suggested that an additional optional system of more sophisticated station locks be installed on new receivers. This would allow a parent to adjust the set so that the child could watch only preselected channels.[68]

Another suggestion, endorsed by former FCC Chairman Richard Wiley, was that licensees be required to broadcast a signal, such as a small white dot, in the corner of the television screen to indicate that the program being viewed contained material designed primarily for adult viewing.[69] The National Association of Broadcasters objected that such a system could cause children to concentrate their viewing on just those programs flagged as "adult" in theme.[70] Nonetheless, such a system, which is presently in use in France, would enable parents to monitor children's viewing on an intermittent basis, and thereby facilitate parental supervision.[71]

In conclusion, we wish to note that the many helpful recommendations offered during our hearings dealt for the most part with the application of immediate remedies to the problems associated with overexposure to television violence. Such specific suggestions were, of course, what the subcommittee sought from the experts who attended. However, to the extent that current problems are a function of the limited number of communications outlets now available, it is likely that the growth of new technologies will bring about a more long-term solution. If legislative and regulatory barriers to the introduction of new telecommunications technologies can be eliminated, the public will be able to enjoy the benefits of a broader range of program options. In an environment of programing abundance, we may find that violent content represents only a small fraction of the total material available, and its impact may diminish accordingly. It is with this hope in mind that the subcommittee will continue its efforts to review the applicability of existing statutes and regulations to the development of telecommunications technologies.

RECOMMENDATIONS

The subcommittee has weighed all of the suggestions presented in the course of its hearings on violence on television and makes the following recommendations:

1. The subcommittee recommends that research material concerning the amount and effects of televised violence be deposited with the

[67] Cowan, LA. 157.
[68] Cowan, LA. 158–60.
[69] Discussion between Representative Gore and Wiley, Washington, 126–7.
[70] Wearn, Washington, 176–7.
[71] Discussion between Representative Gore and Wiley, Washington, 126–7.

National Television Archive being established by the Library of Congress, so that researchers representing the academic community, the broadcast industry, and other interested parties can compare the different methodological approaches with a view toward arriving at some consensus regarding future research endeavors. Dr. Daniel Boorstin, Librarian of Congress, has agreed to the pooling of such data in the National Television Archive. The subcommittee urges all parties to convey appropriate data to Dr. Boorstin within 60 days following release of this report. In addition, the subcommittee recommends that continuing financial support for research on the effects of television be made available by such agencies as the National Science Foundation and the National Institute of Mental Health.

2. Steps should be taken by both public and private organizations to encourage parents to: (a) monitor more closely the viewing habits of their children; (b) participate in a positive and active way in their children's television viewing; and (c) write to local broadcasters and the networks to register any complaints about programs which are offensive.[72]

3. The subcommittee recommends that the FCC:

(*a*) Sever and complete rulemaking within 180 days on the "Westinghouse" petition which seeks to provide local affiliates with more opportunity to prescreen network originated programing;

(*b*) Initiate within 180 days a proposed rulemaking regarding whether the FCC should require locking devices on all new television receivers and/or an unobtrusive program guide, keyed to an electronic signal transmitted by the broadcaster, which would appear on the screen during programs having an adult theme.

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[72] Letters to the television networks should be addressed to: James Duffy, President, ABC Television Network, 1330 Avenue of the Americas, New York, N.Y. 10019; James Rosenfield, President, CBS Television Network, 51 W. 52nd Street, New York City, N.Y. 10019; and Robert Mulholland, President, NBC Television Network, 30 Rockefeller Plaza, New York City, N.Y. 10020.

Copies of letters to the networks or to local broadcasters may be sent to the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. In addition, parents can write to or join one of the numerous public interest groups and begin action through the local or national PTA. The major public interest groups in broadcasting are: Action for Children's Television, 46 Austin Street, Newtonville, Mass. 02160; The National Citizens Committee for Broadcasting, Suite 402, 1028 Connecticut Avenue, NW., Washington, D.C. 20036; and The United Church of Christ, Office of Communications, 289 Park Avenue South, New York, N.Y. 10010.

ADDITIONAL VIEWS OF REPRESENTATIVE THOMAS A. LUKEN

I support the report, "Violence on Television," including the recommendations contained therein. This report proposed by Congressmen Martin Russo and Louis Frey represents a well-balanced statement of the main points discussed by the subcommittee on this most important issue. Although I inadvertently failed to give my proxy to Congressman Russo, I wish to go on record in support of this adopted final draft so that the other members of the subcommittee will know my position on this matter.

I wish to emphasize my agreement with the view expressed in the report that Congress has sufficient grounds to be concerned about the impact of television violence on young audiences. Any resolution of this issue should not, however, place Congress in the position of Government censor of broadcast program content. All efforts must be made to encourage the coordination of research on this matter by members of the academic community, the networks, and other interested parties.

DISSENTING VIEWS OF REPRESENTATIVES HENRY A. WAXMAN, TIMOTHY E. WIRTH, BARBARA A. MIKULSKI, JOHN M. MURPHY, EDWARD J. MARKEY, AND ALBERT GORE, JR.

The subcommittee's report on "Violence on Television," adopted by an 8–7 vote, is, in our judgment, a disservice to those who will read it in the hope of finding firm and sound guidance from this subcommittee on this very serious and complex issue. We believe the report is seriously deficient in several critical respects:

It is too hesitant in its conclusions regarding the adverse effects of viewing television violence.

The report spreads the blame for violence on television away from the networks to such an extent that it reaches the meaningless conclusion that we are all (viewers, licensees, advertisers, producers) to blame for the excessive levels of violence on television—thereby implicity stating that no one is really to be held accountable.

The report pointedly ignores what may be a crucial link between the structure of an industry dominated by three major networks and the level of violence on television. The report shuns asking any further questions about this relationship.

The report refuses to recognize that there are other, affirmative regulatory actions which may be undertaken, consistent with the first amendment, to limit the amount of violence on television by enhancing the opportunity for the presentation of greater amounts of childrens' and public affairs programing.

The report takes a favorable view of industry self-regulation which we believe is unwarranted.

By stating that parents "must" assume greater responsibility for their childrens' viewing habits, the report fails to recognize that it is difficult if not impossible for millions of parents to continually or effectively supervise their children in this regard.

In so doing, the report implicitly tells the American people that with respect to the issue of violence on television, there is no need to worry, everything is under control, the networks know best how to handle the situation, and there is little else that needs to be done.

We reject these conclusions. We believe the subcommittee report is a calculated distortion of the hearing record on these questions, and that it deliberately evades a more conscientious examination of them. We believe this report is biased in favor of the networks.

We therefore respectfully dissent from the subcommittee's views as expressed in this report.

1. The levels of violence on television and its adverse effect on viewers

There is much more that can be said than "televised violence poses a problem that cannot be ignored" and that the question of excessive

violence is "a source of sufficient societal concern to warrant congressional attention and scrutiny." [1]

We believe that an excessive amount of televised violence is harmful to society and that steps must be taken to deal with the problem.

The majority report has implied only a weak connection between the viewing of televised violence and aggressive behavior. Comparisons with earlier drafts presented to the subcommittee show that this report has attempted to deemphasize that correlation and that language has been "softened" wherever possible. In this way, the report does not accurately reflect our very deep concern for the social impact of televised violence.

We believe that research has demonstrated a likely causal relationship between excessive viewing of televised violence and aggressive behavior or feelings of alienation and fear. The preface of the majority report weakens that conclusion by stating that "excessive viewing of televised violence may lead to aggressive behavior." Conclusion 1 is similarly weakened by stating that "excessive viewing of violence may have harmful effects." We feel strongly that there is a consensus that excessive viewing of violence has harmful effects. Therefore, steps should be taken to reduce its presentation on television.

The majority report misleadingly quotes selectively from the Surgeon General's report of 1972:

> The Committee . . . found a "preliminary and tentative indication of a causal relation between viewing of violence on television and aggressive behavior; an indication that any such causal relation operates only on small children (who are predisposed to being aggressive); and an indication that it operates only in some environmental contexts."

The quote is designed to temper the conclusion and to distort the actual meaning of the report. In fact, the Surgeon General's report clearly states that the causal relationship between televised violence and antisocial behavior has been demonstrated sufficiently to warrant appropriate and remedial action.

The majority report talks at length about the definition of violence. We believe this discussion could give the reader the false impression that it is necessary to establish an absolute definition of violence on television before one can assess the impact of such violence on the viewer. An absolute definition will continue to be controversial until a uniform research standard is adopted. But a discussion of the definition of violence does not address the essential point. The definition argument is basically quantitative because one definition may "discover" more acts of violence than another definition when reviewing the same program. Yet it is not the marginal act of violence about which we are concerned or the fact that a particular program had 10, as opposed to 12, acts of violence. None of the researchers who appeared before the committee attempted to correlate a particular act of television violence or the marginal act of violence with a specific aggressive act of viewer. The critical concern is and should be the cumulative effect of viewing high levels of violence on television. By CBS's own admission, the level of violence on television was as high or higher in 1976–77 than it was in 1972. A discussion of the definition of violence merely clouds this fact.

[1] Subcommittee report at 7.

Witness after witness appearing before the subcommittee agreed that the viewing of violence on television had harmful effects. Much of that testimony is discussed in this report and there is much that has been omitted. A precise empirical cause-and-effect relation is perhaps impossible to "prove" because human behavior is a function of so many variables. Yet, the viewing of violence is at least one of those factors contributing to aggressive behavior and we believe it is a major factor. At the very least, one cannot deny the conclusion that less violence on television is in the public interest.

Our disagreement with the majority report is not necessarily with the substance but with the conclusion. The result is to say violence on television is a problem but not something to get too excited about. The connection between violence on television and aggressive behavior is real, it is unmistakable, and it is of great concern to us and to all the American people. We concur with the many witnesses who have testified before the subcommittee that excessive televised violence is harmful to society and that steps must be taken to deal with the problem. It is not enough to state that violence on television poses a problem that cannot be ignored. Violence on television poses a problem of national significance that must be confronted.

2. Responsibility for violence on television

Even though the subcommittee report states that responsibility for violence on television rests in part (along with the networks) with the production community, advertisers, licensees, and the general public, it does not present one iota of evidence to support this contention. The subcommittee report asks us to accept this perspective on face value. We cannot.

The hearing record is clear on this issue: the networks are primarily responsible for the amount of violence on television. As with all programing on the networks, the level of violence on television is directly controlled by them.

The networks in their testimony stated unequivocally that they—and they alone—assume and exercise full responsibility for program content as well as all other programing decisions. Understandably, the networks do not wish to take as much credit for the violence on their programs as they wish to take for their more-heralded positive achievements. We therefore concur with Representative Markey's expression to the networks of some of his frustration in this regard.

> The indications that I get from your testimony is that you will take credit for creative children's programs, that you will take credit for bringing in the types of creative people that will make the particular programs that you direct at children—you will take credit for that, but no one wants to take credit for the violence on television. No one wants to take credit for the 13,000 murders that young people see.[7]

We believe such responsibility rests with the networks.

We also believe that this is reflective of a severe strain between the networks' affiliates' legal mandate, as broadcast licensees, to bear full responsibility for the programs they broadcast over the air and where primary responsibility for programing content is effectively exercised. Although the roughly 600 affiliates present some locally-originated programing (mostly news or public affairs, or off-network

[7] Representative Markey, Washington, 348.

syndicated reruns), the networks are responsible for 70 percent of normal daily programing. To be sure, the financial incentives provided affiliates to carry network programing and the high cost of local origination strengthen the tendency to rely on network programing. Broadcast licensees may find it financially prohibitive not to rely on the networks. But these circumstances do not in any way obviate the affiliates' obligation to fully exercise their independent broadcast judgment. Therefore, we see as one of the central challenges to the broadcasting industry posed by the issue of violence on television as being how to bring into greater congruence the obligations incumbent on licensees and the existing industry structure in which an overwhelming proportion of programing is obtained from the networks.

To place blame for violence on television on advertisers, producers, and the viewing public serves only to confuse the issue. Not once did the networks in their testimony state or imply that advertisers were in any way linked with responsibility for violence on television. Advertisers are looking for an audience to which to deliver their message. There was a time, in the 1950's and early 1960's, when advertisers sponsored complete programs and, concomitant with such sponsorship, were intimately involved in programing decisions. In recent years, advertisers have sought to buy blocks of time and have not been so concerned with the program (or specific program in a series) on which their message appears (much less an opportunity to dictate program content). Lately, however, in response to consumer campaigns against violence on television, many advertisers have become much more sensitive over the placement of their messages, and have wished to avoid the inference that their products are identified with the support of violent programs. Many advertisers have withdrawn their spots from violent programs, and instructed their agents to avoid placement on such programs. We believe this demonstrates, if anything, that the trend among advertisers has been to limit their support for violent programs—and to back their concern by withdrawing their support from certain shows. Therefore to blame all advertisers for the amount of violence on television is, in our judgment, misleading and unsubstantiated.

Members of the Hollywood production community testified repeatedly that violence is on television because the networks wish to buy that kind of product. As Larry Gelbart told the subcommittee:

> It is true that only the pencil is in our hands. The networks tell us rigidly and explicitly, what they will buy and schedule and show, and what they will not. In other words, if television has too much sex, or too much violence, the reason that is so is that the networks want it so. Writers and others are excluded totally from participation in the decisionmaking process. . . .[3]

As the subcommittee report notes, the networks did not contradict these assertions.

Concurrent with this description of the network's control over demand for programing, many producers, writers, and directors stated

[3] LA. 140. See also testimony of David Gerber, *id* at 85; Kathleen Nolan, *id* at 136; David Rintels, *id* at 141; Allan Burns, *id* at 94; Norman Lear, *id* at 260; Richard Powell, Wash., 311.

that they did not have an opportunity, because of such control, to market other product which would both express a fuller range of creative license and, hopefully, meet a broader range of tastes of the viewing public.[4] Again, for the subcommittee to state that the blame for the quality and quantity of violent programs somehow rests with the production community when it is the networks that decide which programs to buy, and which scenes will be in each show, is highly misleading and completely at variance with the testimony before the subcommittee.

Finally, to seek to place such responsibility on the viewing public because of its alleged "demand" for violent programs is wholly without basis. Viewer tastes and attitudes have changed drastically in the past decade. Violent programs are simply no longer the highest rated—and the networks have so testified.[5] Indeed, mail from our constituents makes clear that there is a widespread feeling that there is too much violence on television and that it should be reduced. And, in testimony submitted to the subcommittee, public opinion researchers found that although by the narrowest of margins—51 percent—most people do not have complaints about television, the lack of diversity, the presence of too many commercials, and too much violence are the complaints most often cited by those who do.[6]

As we will discuss more fully in our views on industry structure, to suggest that violence on television is a normal expression of traditional notions of supply and demand may not be appropriate; the viewer can only make a decision of "on" or "off," and is unable to make an affirmative expression of choice for that which is not available. We therefore do not believe that the placement of responsibility for violence on television on the viewing audience is fair or accurate.

3. The link between industry structure and violence on television

The report adopted by the subcommittee failed to address what is perhaps the central issue in the controversy; whether the very market structure of television—a market dominated by only three major purchasers of programing—may be responsible for the high level of violence on television. We believe that a more competitive and open system might reveal strong preferences for programing options that are not currently available, and programing needs that are not being met, as well as provide incentives for the development of alternative and more diverse programing.

We believe that the record of the subcommittee's hearings, as well as other information generally available, is sufficient to warrant a review of the structure of the broadcasting industry in order to evaluate (a) whether the present system of broadcasting arbitrarily restricts choice or is in some way primarily responsible for the high level of violence on television, and (b) whether consideration should be given to changing the industry's structure by legislation designed to increase competition and, perhaps, choice.

We very much hope this will be an integral part of the forthcoming network inquiry to be conducted by the FCC under its new chairman, Charles Ferris.

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[4] Gelbart and Rintels, I.A. 140, 142; Roddenberry, I.A. 277.
[5] *See* CBS and NBC, Wash 229; and Gerbner, *id.* at 29.
[6] Williams and Hanneman, I.A. 306.

Critics of our perspective contended that the inclusion of such a recommendation in the subcommittee report would have been prejudicial of the issue, and had no substance in fact. We would state only that to raise the issue is not to prejudge it; we simply believe it should be fully evaluated. Most importantly, however, our review of the issue of violence on television unavoidably raised questions regarding the industry's structure. To ignore the structural issue is to in some measure disregard an important insight into the problem.

The staff, in preparing the report, did not only ask the questions how much violence is there on television, what effects does it have on viewers, and what can be done about it, but also asked: Why is there so much violence on television? As the record of the hearings was reviewed, it became clear that violence on television may not only be an end unto itself—a cause of certain things—but perhaps a symptom of broadcasting's structure as well.

This perspective was pointedly raised by several witnesses in Los Angeles and Washington. For example:

Grant Tinker and Allan Burns testified that there is not a free marketplace in television.

Kathleen Nolan and Chester Migden stated that the economics of a system with only three major buyers allows them to exercise total control over program choice; that the audience is captive and hence unable to make an affirmative expression of preference for a programing option that isn't available; and that a true marketplace would allow the discovery of what the American people want.

David Rintels asked the subcommittee to inquire whether the airwaves are being used in the country's best interest— diversity, freedom, and access by all kinds of people to all kinds of programing.

Norman Lear testified that the American people do not watch violence out of choice, but because it is what is offered.

Gene Roddenberry stated that greater diversity—an open market—would allow for full creative expression, and full viewer selection.

Henry Geller stated that it would be desirable for the networks on their own initiative to present high-quality children's programing, but that a Gresham's Law syndrome—in which "bad" programing would drive out "good"—might evolve if one of the three networks countered with low-budget cartoons which attracted more viewers.

Peggy Charren testified that the rush for ratings is responsible for violence on television.

Richard Powell contended that violence will recur as an issue for television as long as the network structure remains unchanged, and that the solution is not to regard the present system as sacrosanct. He stated the FCC and the Congress can and should provide opportunities for greater competition.

These witnesses[7] raised the structural issue, and from their testimony, the linkage between violence on television and the industry's structure may be stated as follows:

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[7] Grant Tinker and Allan Burns are the creators of the *Mary Tyler Moore Show*. Kathleen Nolan and Chester Migden are associated with the Screen Actors Guild. David Rintels, an award-winning writer, is former President of the Writers Guild of America, West. Norman Lear is the creator of *All in the Family*. Gene Roddenberry is the creator of *Star Trek*. Henry Geller is former General Counsel of the FCC and newly designated Assistant Secretary of Commerce for Telecommunications. Peggy Charren is associated with Action for Children's Television. Richard Powell is a well-known television writer.

There are only three major purchasers—and outlets—of programs. Their market is based on competition for mass audiences; the competition is such that programs which do not attract 30 percent of the audience do not stay on the air—even though millions are watching. This means:

(*a*) That programing is inevitably directed toward attracting the largest possible audience in order to secure the greatest revenues;

(*b*) That programing will often be the lowest common denominator of entertainment; and

(*c*) That because competition for this size audience is so intense, there exists the strongest market deterrent against producing alternative programing in which the audience cannot be guaranteed.

Therefore, if it is found, for example, that Westerns are attracting the largest audiences, the temptation to program Westerns is irresistible. And television was saturated with them in the sixties.

The same can be said for violence or sex or any other entertainment style which comes to dominate television programing. This mimicking of one by the other, encouraged by a relatively closed system dominated by the three networks, all in order to capture the largest audience, means that there is a diminished opportunity for program choice other than what is dictated by the economics of such a system. It is in this sense that violence on television may be viewed as symptomatic of a larger, structural issue.

A market that was more open—with less programing supplied by the networks, more localism, more cable, greater support for public television, more parity between UHF and VHF—might be able to deliver more different kinds of programing, from more sources, to meet more diverse entertainment/public affairs tastes than the present one—all of which would be consistent with a society as abundant, pluralistic, and broad as ours.

In response, the industry would say that the public has an extraordinarily wide choice of programing, that what is on the air is what the public wants to see, and that the shows which are unpopular do not make it. The National Association of Broadcasters would add that programing is so diverse that it stretches the ability of the creative community to meet the challenge.

One of the central choices to be weighed is this: Programing costs a lot of money. The quality of network programs is high. Such quality can most likely be maintained only with large revenues. A more competitive system, as outlined above, may not be able to generate or sustain such revenues. Thus, in a more competitive system, quality may suffer. And it is this degree of quality, of delivery of programing, which the American people have come to expect and enjoy. And so it may well be determined that it is best to live with the warts of this structure rather than change its face altogether.

But we reiterate that although this is the heart of the structural issue which violence raises for television, the above discussion does not prejudge the issue; it simply raises some considerations for review.

What disturbs us greatly is that by deleting all references in the report to this facet of the question, the subcommittee has blocked a full appreciation of the scope of the issue of violence on television.

The networks have made it clear they consider attention to this issue a serious threat to the status quo, which of course has been very beneficial and highly profitable for them. We are not at all certain that any change in industry structure will result in the delivery of programing as diverse and of as high quality as the networks currently provide.

But to not even ask the question is to arbitrarily foreclose awareness and debate on a critical issue. In this respect, we believe the subcommittee's report renders a profound disservice to all who are concerned with these matters.

4. The subcommittee report ignores the regulatory option of percentage programing

The subcommittee received repeated testimony that there are regulatory approaches available to both it and the FCC, consistent with the limitations of the first amendment, which could limit the amount of violence on television. And yet the subcommittee report pointedly ignores the most far-reaching of these suggestions: whether the licensees, in fulfilling their responsibility to serve the "public interest, convenience, and necessity," should be required to carry certain percentages of distinct categories of programing, such as children's and public affiairs programing, with enforcement through the license renewal process.

Concern over the level of violence on television is often underscored by the lack of a relative abundance of nonviolent, alternative programing, such as children's programing, in prime time. Such programing has traditionally had limited access to the airwaves other than on Saturday mornings and, more recently, in the late afternoons. Geoffrey Cowan, a communications lawyer from Los Angeles, specifically proposed that the FCC could require at least one network to provide—on a rotating basis—at least one children's program between 7 and 9 p.m. The constitutional validity of such a rule has not been tested, but Cowan makes a persuasive argument that it would be consistent with previous court decisions, such as Red Lion, which have been rendered. Henry Geller also reviewed this regulatory approach in his testimony.

There are, to be sure, serious drawbacks to this proposal. Former FCC Chairman Richard Wiley stated that he did not want to become the "master programer" for the Nation. We have some sympathy with this concern, as the potential for abuse under this kind of rule would exist.

Nevertheless, we believe this suggestion is an intriguing one which could be highly effective in reducing the level of violence on television.

Accordingly, we believe the FCC should initiate a petition for rulemaking regarding whether each licensee, in fulfilling its obligations under the public trustee concept of broadcasting, should carry certain percentages of certain categories of programing. A formal rulemaking proceeding would permit the fullest evaluation and considered reflection of this suggestion.

5. Industry self-regulation has not effectively coped with the issue of violence on television

Although the 1977–78 television season promises to be less violent than in previous years, we believe this is a belated response to desires which have been expressed by so many—the viewing public, public

interest groups, the Congress, and the FCC—for over two decades. Industry self-regulation, at least with respect to this issue, has not been as effective as possible.

We support actions by the networks to assist parents who want to control the kind of shows their children watch and to reduce the level of violence on television. But we believe that family viewing was seriously flawed in two respects:

(*a*) it did little to redress violence after 9 p.m., when millions of children are still watching television, and

(*b*) it was completely ineffective in the Central and Rocky Mountain time zones, as the three network program "feeds" were not adjusted for the time difference. Thus, family viewing in those areas ended at 8 p.m.

We are also concerned by the testimony of Dr. Gerbner that over the last season, violence increased sharply during the family viewing hour—which was confirmed by data available from CBS—and during children's programs on Saturday mornings. For the three networks combined, there was more violence in the 1976–77 season than the year before.

Therefore, even as the networks were proclaiming family viewing as an effective policy which would have a positive impact, the level of violence on television remained relatively undiminished.

We are convinced that the networks are now more sensitive to the concern over violence on television, and wish to deal with it in a constructive manner. But we believe the record of the past several years indicates that despite such intentions, industry self-regulation has its limits, and has not been responsive to the problem.

This may in part be due to an absence of systematic and regular consultation voluntarily undertaken by the networks with those who have a real and compelling interest in these issues. Family viewing might have been more successful had the procedure by which it was conceived and implemented—secrecy and the deliberate exclusion of those who had a legitimate interest in the private discussions between the networks and the FCC—not been so deficient. In the aftermath of the family viewing controversy, various constituencies—public interest groups, producers and writers, and others—have approached the networks to request greater participation and collaboration regarding these issues. In recent months, the industry has exhibited a responsiveness to these concerns by meeting with these groups. This is a most encouraging development which will hopefully work to insure better understanding among all involved.

6. Parental supervision

Violence on television is of particular concern to parents because, as with all programing on television, it is such an influential part of a child's experience. Television, especially for children, is more than an entertainment or educational medium, or even an electronic babysitter; it is a transmitter of values and an agent of socialization as well.

The report insists that parents must assume more responsibility for their children's viewing habits. While we do not disagree with this general proposition, for millions of households where both parents work, however, this type of counsel from the subcommittee is unrealistic at best, and insensitive at worst.

In this regard, we wish to associate ourselves with the comments of Grace Baisinger, president of the National Congress of Parents and Teachers, who in reviewing this report has written:

> The PTA . . . while stressing the responsibility of parents in this regard, also points out the limitations of supervision as a control. Parents obviously cannot be with their children every moment of the day, particularly working parents.

We believe this underlines the need for attention to be focused on the kinds and choices of programing available.

In conclusion, we believe the subcommittee's report is misleading and incomplete. The problems are more severe than the report acknowledges; the options to deal with them not as limited as the report suggests; the questions to be confronted and resolved more broad than the report would have us believe. It is our hope these dissenting views can begin to rectify these basic imbalances in the subcommittee's judgment on the issue of violence on television.

ADDITIONAL DISSENTING VIEWS OF REPRESENTATIVES JOHN M. MURPHY, BARBARA A. MIKULSKI, AND TIMONTHY E. WIRTH

"A continual exposure of a generation to the commercial exploitation of the enjoyment of violence and cruelty is one way to corrode the foundations of a civilized society." Walter Lippmann wrote these words, and one of his major concerns was the saturation of American commercial television with violence. We share his concern, as do many other Americans. Because we do, we think it is incumbent upon this subcommittee to provide the American public with an honest and forthright statement of the problem of televised violence and to begin the search for a solution to the problem.

The report of this subcommittee, which was approved by a bare majority, does not meet this standard. It qualifies the evidence where there should be no equivocation. And it places an obstacle before the search for a solution where the way should be open. In our view, this report is a disservice to the American public. We concur fully with the dissenting members of the subcommittee.

The evidence presented to the subcommittee was clear: Violence is still a basic ingredient of network programing. Dr. George Gerbner, of the Annenberg School of Communications, who has been measuring televised violence for a decade, testified that the level of televised violence during the 1976–77 season was the highest in the history of his violence index. An independent study conducted by Drs. Bradley Greenberg and Charles Atkin, of Michigan State University, confirmed that televised violence was at a very high level. One of the more disturbing findings made by Drs. Greenberg and Atkin was that televised violence reached its highest level during the Saturday morning "ghetto period" (when almost every American child under the age of 11 was watching). Drs. Greenberg and Atkin concluded that the typical child was viewing some 300 acts of physical aggression on television weekly. It is an alarming statistic.

The majority report concurs that the level of televised violence last season was exceptionally high. It could not do otherwise. Even the networks concede this fact. But the majority report subtly obscures things. It omits the alarming statistics, dwells at length on the problem of defining violence for purposes of measurement (although a closeup picture of a shot, stabbed, battered, or murdered human being is not difficult to measure or define), and makes only a general statement that the level of televised violence is high. The net effect is to blur the real picture: That the American home screen is inundated with acts of violence.

The majority report also equivocates on the impact of televised violence on young people. We had thought that the evidence was clear: The landmark report was that of the Surgeon General's Scientific

Advisory Committee on Television and Social Behavior, which was issued in 1972. The report was based on 23 new research studies and found that there was a causal relationship between televised violence and antisocial behavior. That finding has never been seriously disputed. And yet the majority report would have us believe that the issue of causation is not yet resolved—that there is no proven link between viewing televised violence and aggressive behavior. The majority report is simply wrong. And in being wrong, it is wholly misleading.

Every major review and study has confirmed the finding of the Surgeon General's Committee. In the December 1975 issue of the Journal of the American Medical Association, Dr. Michael B. Rothenberg, a Seattle psychiatrist, reviewed some 50 studies dealing with the effects of televised violence. The studies involved as many as 10,000 children and adolescents from every conceivable background. They all showed, said Dr. Rothenberg, "that violence viewing produces increased aggressive behavior in the young." His conclusion was "that the time is long past due for a major, organized cry of protest from the medical profession in relation to what, in political terms, is a national scandal."

Some months later, in the April 8, 1976 issue of the prestigious New England Journal of Medicine, Prof. Anne R. Somers, of the New Jersey-Rutgers Medical School, also reviewed the work that has been done to assess the effects of television violence on children and adolescents. Her advice to the medical profession was as unhesitating as Dr. Rothenberg's:

> "The essential first step is general professional acceptance of the role of television violence as a risk factor threatening the health and welfare of American children and youth and official organizational commitment to remedial action."

In 1976, the Rothenberg and Somers articles prompted the governing body of the AMA to give formal consideration to the issue of televised violence. The AMA concluded that "TV's massive daily diet of symbolic violence and crime is an environmental hazard" and "a risk-factor threatening the health and welfare of young Americans." And in June of this year, the AMA reported on a poll of 500 physicians on the subject of televised violence. They were selected as representative of the entire physician population of the United States. 147 responded. 93.9 percent said that there was too much violence on television. The doctors were then asked whether any of their patients "presented behavioral symptoms and/or physical problems that may be related to TV violence;" 13.8 percent said yes, and another 40.6 percent said that they "suspected so" but could not prove the relationship; 6.5 percent did not answer the question, and only the remaining 39.1 percent said no.

The responses indicated that exposure to televised violence had led to heightened aggression in children and to epileptic seizures and nightmares. And there were instances of injury when children tried to imitate what they saw on television. One doctor treated two children who injured themselves when they jumped from a roof in emulation of "Batman". Another reported that a child had set his house afire in imitation of an arson incident in a television show. And a third reported that a child played "police" with a loaded gun after having watched a television police show known in the industry as a "tire-squealer".

In sum, more than half of the doctors responding to the poll saw some indication that televised violence lay behind the behavioral and medical problems of some of their patients. It is another alarming statistic.

And now there is fresh evidence that too much televised violence has serious deleterious effects. An intensive 6-year study of 1,565 boys in London, England, has just been completed. It was financed by CBS and conducted by William Belson and a survey team at the London School of Economics. The study carefully isolated television as a contributing factor in antisocial behavior. Its conclusions: Those who were frequent viewers of televised violence committed 50 percent more rape and other crimes than those who were not. The study should not surprise us. It only confirms what prior research has told us about the effects of televised violence.

Parents are as concerned as the medical profession over the pervasiveness of televised violence and its influence on their children. It requires no special profundity for an intelligent parent to observe, and to conclude, that a perpetual diet of televised mayhem and brutality can cause harm to his or her children. Many parents monitor the television their children watch and prevent them from seeing excessive violence. But they are in a minority. Most parents take too few precautions or are unable to because they have jobs, and their children have only a small capacity to tolerate television's killings, beatings, and cruelty. Given their high intake of televised violence, their propensity to emulate violent behavior or to develop aggressive tendencies can be substantial.

Congressman Murphy recently sent a questionnaire to every postal patron in his congressional district of Lower Manhattan and Staten Island: 81 percent of those responding said that today's television was providing an unhealthy example for our children. And 73 percent went so far as to say that since the Surgeon General of the United States has found that crime and violence on television contribute in a major way to the violent behavior of our youth, a warning preceding a violent program that "TV may be harmful to your children's mental health" is warranted (similar to the warning about smoking on a cigarette package).

There can no longer be any doubt that televised violence is a significant contributor to the high level of violence in American society. And yet the networks, in a form of "new speak" that verges on dishonesty, simply refuse to accept the scientific evidence. In October 1976, speaking before the Association of National Advertisers, Herbert Schlosser, NBC's president, said that the issue of televised violence:

> ". . . has been clouded by misunderstanding and misinformation and that it has been distorted by a tendency to make television an easy scapegoat for persistent and historic social ills."

He then went on to say that,

> ". . . many serious studies have demonstrated that violence springs from a complex of social and economic conditions that include poverty, urban decay, drugs, the breakdown of the family, unemployment and racial discrimination."

On its face, Schlosser's statement was unexceptionable. Violence in America does have many roots and many causes. But the statement was more than this: it was a subtle disclaimer that the networks bore any responsibility for the high level of violence in our society.

A few months later, the NBC documentary "Violence in America" picked up the Schlosser theme and extended it. There were vignettes to show that parental mistreatment, poverty and the lack of economic hope, racial discrimination, the stresses of urban life, and the growing sense of alienation were the causes of violence. And the documentary spewed forth the stock replies of network executives whenever they are challenged on the issue of televised violence: the spirit of aggression is so deeply implanted in man's nature that it must always break out; violence is a recurrent theme of great literature from Sophocles to Shakespeare to Faulkner; violence is a natural attitude inherited from the experience of our westward expansion; and television only mirrors society. The final insult to the intelligence of the American public was Edwin Newman solemnly intoning that violent shows are the viewing public's fault because that is what we like to watch. "Violence in America" can be dismissed as a misguided documentary. But what is disturbing about it is the network attitude it reveals: an unwillingness to accept the logic of the scientific evidence on the deleterious effects of televised violence, and an unwillingness to act with responsibility and restraint in the depiction of violence on the home screen.

In our view, the high level of violence on American television is the fault of the three networks. In the last analysis, it is the networks that control access to American television and decide what the American viewing public will or will not see on television, particularly during the evening hours. The networks must bear the responsibility for the ways in which they exercise their control.

The majority report concedes that the networks bear some primary responsibility, but qualifies its concession. In the end, says the majority report, we are all to blame—station licensees, advertisers, program producers, and the viewing public at large. And by this apportionment of blame, the majority report so dilutes the responsibility of the networks as to make it meaningless. Here, again, the majority report is wrong and misleading. The evidence is clear: the networks have concentrated within themselves control over American programing; and because violence means higher ratings and higher profits for themselves, they have used (or, more properly, abused) their control to provide the viewing public with a steady stream of violent programing. The networks properly deserve the blame.

Violent programing has been a stable of network schedules for more than 20 years. New television programs come and go each season, but violence in all its forms—sometimes presented in the most forthright and brutal manner, sometimes subtly glorified, sometimes almost surreal, and sometimes used in a mechanical way—is still a basic ingredient for the networks. From time to time, the networks promise that they will reduce the level of violence—usually in response to a public outcry or a congressional inquiry. But they rarely do; and when they do, they soon relapse. The industry has never been able by self-

regulation to lower the violence quotient. And so we now think that the time has come to take a hard and fundamental look at the basic institutional structure of American television: to find ways of diffusing the control of the networks and to open the structure to alternative sources of programing.

What is a network? In essence, it is only a broker bringing together national advertisers, program producers, and a line-up of stations scattered throughout the country. A network's power as a broker is reinforced by its economic power as the owner of five television stations in the largest markets—stations that are capable of reaching approximately 25 percent of the viewing public. This power is ineluctable; a national program can rarely, if ever, be economically successful if it is not accepted by a network for presentation on its owned stations. Using in tandem their power as national brokers and their power as the owners of stations in the largest markets, the networks have been able to concentrate within themselves control over American television. They select the programs that will be shown, and they are the ultimate editors in every stage of the production process. The power of decision is theirs, and they have used this power to give the viewing public a program diet rich in violence.

During the subcommittee's hearings on televised violence, Congressman Murphy submitted to the House one approach to this problem. H.R. 4452 is a bill designed to limit the control of the three commercial networks over television broadcasting. It has two significant features. First, it would limit the amount of programing that a station licensee may take from a network in each of the segments of the broadcast day (one of which is prime time). During each segment, a network would be permitted to supply no more than half of a station's programing, and the station would have to look to other sources for the remaining half. Second, H.R. 4452 would limit each network to the ownership of one station and require each to divest itself of its remaining four stations. These provisions limiting access to air time and limiting station ownership to a single station could mean a swift end to the stranglehold the networks now have on the market for national programing.

There is nothing magical about the brokering functions that the networks perform today. Other entities can perform them if they are given the proper opportunity. H.R. 4452 could provide an opportunity for new entities to come into the field. They could be established communications companies, entertainment production companies, large business corporations seeking new markets, or wholly new organizations. The new entities could divide amongst them the air time that the new limitation on network access would make available. They might well become a group of mini-networks, each taking a portion of the period. But it is not necessary to predict the precise nature of the institutional structure of the future; this development can be left to the newly opened marketplace. H.R. 4452 might bring greater diversity in television programing and better service to the American viewing public than now exists—and considerably less violence.

H.R. 4452 is only one approach to the problem of network control which breeds so much violence. There are others that are also worthy

of study. The majority report, however, bars any such study. It decrees that the subcommittee may not even begin to examine the institutional structure of American television, at least not in the context of the violence problem. The effect of the subcommittee's action is to reject out of hand the option of restructuring the television industry as a way of solving the problem of televised violence. We find this rejection both incomprehensible and shocking. It strips the subcommittee of considerable power and limits it to the proposal of relatively minor remedies. And it forces the viewing public to rely on network self-regulation. If past is prologue, that is not a happy fate.

SEPARATE VIEWS OF REPRESENTATIVE HENRY A. WAXMAN

The subcommittee staff excluded from an earlier draft of this report a section which addressed the impact of the family viewing policy on those who produce and write television programing. I believe this section accurately reflects the record of our hearings, and wish to reinsert this discussion below.

I believe this section of the report, which had appeared in previous drafts, is important for several reasons:

(1) It was originally because of the issues raised by the Hollywood production community regarding family viewing that the subcommittee decided to embark on its current review of violence on television.

(2) The subcommittee spent 2 days in Los Angeles receiving testimony on these questions from many of television's leading contributors. They described, from their unique vantage, the industry's workings—as they see them—and how it affects them. It is important to realize that when we talk about the regulation of broadcasting, or the need to take steps to reduce the level of violence on television, we are also talking about indirectly regulating the program writers and producers. Indeed, they have been indirectly regulated for years; family viewing was just another such policy. These artists' perspectives, especially on the first amendment and the dilemma between artistic freedom and network control over programing, have proved instructive to many members of the subcommittee as we proceeded with our hearings.

(3) Our visit to Los Angeles represented the initiation of what many hope will be an ongoing dialog over many of the issues before the subcommittee.

I trust that the discussion below will make those who may not be familiar with the programing process more sensitive to the demands and limitations inherent in it.

Therefore, I believe the following new conclusion should have remained in this report:

The imposition of the family viewing hour had a chilling effect on many program producers. Because family viewing defied objective definition, it distorted the traditional relationships between the program production industry and the networks' program practices departments. Implementation of this policy resulted in some self-censorship. Finally, the way family viewing evolved made real to many in the program production industry the specter of Government-inspired censorship.

The program production industry was at first confused about what family viewing meant, but soon came to a realization that it implied that family hour programs would be subject to some type of "super-censorship".[1] Program producers, both curious and wary of the con-

[1] Tinker and Burns, LA, 89, 92.

cept,[2] tried in vain to ascertain the actual standards for the family viewing hour. The answers they received were indefinite: "We will know it—violations of family viewing—when we see it." [3] "We try not to offend the most uptight parent we can imagine watching with his family." [4] In short, the networks "could not tell anybody what it is." [5] In their testimony before the subcommittee, the networks also could not define family viewing, beyond its containing programs "acceptable to the whole family." [6] "The guide—as to what constitutes family viewing—has to be what our experience, what our total experience, what our reactions are from the public, what our knowledge is about good taste, which is very difficult to define . . ." [7]

Many of Hollywood's producers, writers, directors, and actors found that family viewing disrupted the traditional guidelines that had governed their prior relationships with the network program practices staff. What seemed to occur was that a network "censor" no longer made decisions about what the program practices department viewed as offensive and inconsistent with network standards, but appeared to make judgments based on what others might view as incompatible with family viewing. The network "censor" was telling us that even though he knew we would (handle sensitive subjects in good taste) it was still no longer acceptable, even though it didn't offend him. That was the true difference; he was answering to people who were answering to other people.[8]

And so the producer "wasn't dealing anymore on a one-to-one basis . . . as it had been before, but now I was dealing with ghosts." [9]

One consequence was that the censorship imposed by the networks was matched to a certain extent in the creative community by an extraordinary amount of self-censorship. Because family viewing was a "negative guideline" in that the networks could never be more explicit about it than knowing what they did not want,[10] producers "pulled back" on some stories because they "didn't want to have trouble." [11] "Thoughts were being censored, subject matter, ideas, concepts. This is what is frightening." [12] "And what you have is a growing, a cancer, on the creative process that has no definition, and therefore there is no way to attack it." [13] At least one producer engaged in self-recrimination for having neither the courage nor the strength to contest family viewing edicts all the way down the line.[14]

Finally, the program production industry recognized that pressure from the Government to "do something" about violence on television had an effect on the product they were permitted to make and market.[15]

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[2] Because of the way it had evolved.
[3] Tinker and Burns, LA, 90.
[4] *Id.*
[5] Lear, LA, 266.
[6] NBC, Washington at 276–7.
[7] NBC, Washington, 279. Representative Waxman agreed that it was. "The frustration that I am expressing is that you cannot give me a standard because it is a very difficult issue to give absolute standards for, but now you have a period of time (family viewing) where you are going to have an extra special standard, and that is not defined." Representative Waxman, in questioning NBC, 281.
[8] Tinker and Burns, LA, 93.
[9] Tinker and Burns, LA, 90.
[10] Tinker and Burns, LA, 90.
[11] *Id.*
[12] Nolan and Migden, LA, 134.
[13] Lear, LA, 266–7.
[14] Tinker and Burns, LA, 90, 97.
[15] Tinker LA, 89.

Many in Hollywood are fearful that the public reaction against violence may lead to an encroachment by the Government upon "our drama and liberty and license to do what we feel is good." [16] Accordingly, the plantiffs in the family viewing suit feel wronged by others who would impugn the motives behind its court challenge of the family viewing policy.[17]

The Government's involvement in these issues as a participant in the controversy,[18] and an advocate of family viewing,[19] rather than a dispassionate and impartial observer, only compounds these fears.

[16] Gerber, LA, 75.
[17] Nolan and Migden, LA, 128.
[18] *Writers Guild of America, West* v. *FCC*.
[19] Wiley, Washington, 104–105, 124.